

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application No.: 10/824,291
Appellants: MUHS, J. D. et al.
Filing Date: 04/14/2004
Confirmation No.: 6054
Title: Hybrid Solar Lighting Distribution Systems and Components
Examiner: Mowla, Golam
Group Art Unit: 1795

Mailstop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

In response to the Examiner's Answer mailed 1/7/2009, this Reply Brief is filed in addition to the Appeal Brief filed 10/10/2008 and is in response to the Examiner's Answer mailed 1/7/2009. This is an appeal from the decision of the Examiner finally rejecting claims 1, 3-6 and 8-12 of the above-identified application. Please find included herein the following:

- (1) APPELLANTS' ARGUMENTS and
- (2) CONCLUSION.

(1) APPELLANTS' ARGUMENTS

I. THE PRIOR ART ELEMENT PURPORTEDLY DISCLOSING A FIBER DISTRIBUTION PANEL WAS NOT PARTICULARLY POINTED OUT THEREBY HINDERING APPROPRIATE PROSECUTION ON THE MERITS

As an initial observation, nowhere in the record of this case prior to the Examiner's Answer, has the Examiner particularly pointed out the element of the cited prior art reference (Muhs) that purportedly discloses a fiber distribution panel as claimed. The goal of the patent examiner is to clearly articulate any rejection early in the prosecution process so that the applicant has the opportunity to provide evidence of patentability and otherwise reply completely at the earliest opportunity." MPEP 706. Unfortunately, such an opportunity was not available for the Applicants in this case. On the contrary, the Examiner merely cited Figure 6b as including a fiber distribution panel. See Office Action mailed 10/19/2007 and Office Action mailed 5/28/2008. The Applicants argued in Amendment B filed 3/19/2008 (pages 9 and 10) that the aperture shown in Figures 6a and 6b of Muhs is not a fiber distribution panel, clearly indicating the Applicants' misconception that the Examiner must be referring to the aperture. The Examiner had ample opportunity to "clearly articulate" his position regarding the fiber distribution panel. However, the Office Action mailed in response on 5/28/2008 failed to address the Applicants' arguments concerning the fiber distribution panel, and the Action maintained that the fiber distribution panel was disclosed in Figure 6b without clarification. After a Pre-Appeal Brief Request for Review, the Applicants' representative had multiple telephone conferences with the Examiner memorialized by the Summary of Examiner Conferences filed 9/30/2008 wherein Applicants indicated their intention to maintain similar arguments distinguishing the fiber distribution panel from the aperture shown in Figure 6b of the

Muhs reference, and the Examiner indicated merely that Figure 6b disclosed a fiber distribution panel.

In summary, Applicants were not given sufficient opportunity to respond to “clearly articulated” rejections “early in the prosecution process” despite numerous opportunities for the Examiner to clarify his position. *See* MPEP 706. Applicants are unsure of an appropriate remedy for these circumstances but deemed it proper to address the waste of time and money spent arguing positions seemingly unnecessarily. Despite these inefficiencies, Applicants move to the merits of the case and distinguish the fiber distribution panel from the concentric fiber mount assembly (3) shown in Figure 6a of the Muhs reference.

II. A FIBER DISTRIBUTION PANEL, AS CLAIMED, IS NOT DISCLOSED BY THE CONCENTRIC FIBER MOUNT ASSEMBLY OF THE MUHS REFERENCE.

In response to the arguments set forth in the Appeal Brief, the Examiner maintains that Muhs discloses a fiber distribution panel in Figures 6a, 6b, and 7. Specifically, the Examiner points to the concentric fiber mount assembly (3) as labeled in Figure 6a. *See* Examiner’s Answer page 8. The Examiner also argues that Muhs discloses merely a fiber distribution panel and not a “plug and play” fiber distribution panel, and that the “plug and play” type of fiber distribution panel is disclosed in the specification but should not be “read into the claims.”

Applicants respectfully disagree. The concentric fiber mount assembly is not a fiber distribution panel as claimed and as supported by the Applicants’ specification.

Generally, a claim term is given its ordinary and customary meaning defined as “the meaning that the term would have to a person of ordinary skill in the art in question at the time of the invention.” *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312 (Fed. Cir. 2005), *cert. denied*, 126 S. Ct. 1332 (2006). The particular use of the claim language and the applicant’s statements during

patent prosecution cannot be ignored in the construction. Oakley, Inc. v. Sunglass Hut Int'l, 316 F.3d 1331, 1341 (Fed. Cir. 2003). Also, “the interpretation [] given a term can only be determined and confirmed with a full understanding of what the inventor actually invented and intended to envelop with the claim language.” Renishaw PLC v. Marposs Societa' per Azioni, 158 F.3d 1243, 1250 (Fed. Cir. 1998). Extrinsic evidence is only referenced in the rare event that the intrinsic evidence, including the particular use of the term in the claim containing the language at issue and the particular use of the term within the rest of the patent, *see* Goldenberg v. Cytogen, Inc., 373 F.3d 1158, 1166-68 (Fed. Cir. 2004), is insufficient to determine the acquired meaning of that language. Pfizer, Inc. v. Teva Pharms. USA, Inc., 429 F.3d 1364, 1374-75 (Fed. Cir. 2005).

In this case, (i) the particular use of term in the claim at issue; (ii) the particular use of the term within the rest of the patent; and (iii) a full understanding of what the inventor actually intended to envelop with the claim language, all provide intrinsic evidence that a “fiber distribution panel” is not a “concentric fiber mount assembly” as shown in the Muhs reference.

(i) First, claim 1 claims a hybrid solar energy distribution system including two main components, the fiber receiver and the light distribution system. The “fiber distribution panel” is a sub-component of the “light distribution system.” The light distribution system receives visible light from a “fiber,” which is claimed as a sub-component of the fiber receiver, which is for receiving visible light. Accordingly, the fiber distribution panel is not part of the fiber receiver, described and referenced in the specification of the application as number 32 (see Figure 1). The fiber distribution panel is part of the light distribution system, shown in Figure 8, which is remote from the fiber receiver. Based on the language of claim 1, the term fiber distribution panel should be construed as a limitation or element distinct from the fiber receiver. In the Muhs reference, the “concentric fiber mount assembly” functions to arrange the multiple fibers “so that their centers are evenly

distributed,” *see* Figure 7 caption. However, the concentric fiber mount assembly is not part of a light distribution system as shown in Figure 8 of the application. Rather, the concentric fiber mount assembly is part of a “light collection system” and is proximal to the optical fiber ends that receive light from the primary and secondary mirrors of the light collection system. *See* Muhs page 3. A light distribution system, as referenced in Muhs page 3 and as claimed, is distinct from a light collection system, which, in some applications includes multiple mirrors and fibers for receiving light. In short, the “fiber distribution panel” is part of a “light distribution system” as claimed in Claim 1. It is not part of a “light collection system” or a “fiber receiver” which is claimed as a separate component. On the other hand, the “concentric fiber mount assembly” is part of a “light collection system” as shown in Figures 6a and 6b of the Muhs reference. *See* Muhs pages 3-4.

(ii) Second, the use of the term in the specification of the patent is relevant intrinsic evidence of the ordinary meaning of the term. The term “fiber distribution panel” is described in the specification with reference to Figure 8, which shows a fiber distribution panel 126 receiving a fiber bundle 122 from the fiber receiver 32 (*see* Figure 3) and “distributing [the light] to multiple luminaires. Specification, paragraph [0026]. Accordingly, the fiber distribution panel functions to distribute the collected light received from the fibers 120 and 122 to multiple hybrid luminaire 126. In some embodiments, it is “centrally located” to the various hybrid luminaire and functions as a “plug and play” device. However, it does not function to concentrically arrange various 18mm fibers as part of a “light collection system” as described and shown in Muhs. Accordingly, the specification of the application provides relevant intrinsic evidence of the ordinary meaning of the term “fiber distribution panel,” and the term should be construed as distributing collected light received via fiber(s) from the fiber receiver to multiple hybrid luminaire.

(iii) Third, and finally, a full understanding of the intention of Jeffrey D. Muhs (a listed inventor in this application) in claiming a fiber distribution panel indicates that Mr. Muhs did not intend to claim a “concentric fiber mount assembly” as described in the Muhs reference. The most striking evidence that Mr. Muhs did not intend a “fiber distribution panel” as claimed to include a “concentric fiber mount assembly” is Mr. Muhs’ signed declaration stating that “there is no fiber distribution panel in Figure 6b, or described elsewhere in the Muhs Reference.” *See* Declaration of Jeffrey D. Muhs. In addition, it is apparent from the specification of the application that Mr. Muhs did not intend to claim a “mount” as the term “mount” is used elsewhere in the specification. For example, the secondary mirror mount 33 mounts the secondary mirror 31. The secondary mirror mount 33 is flexibly attached to the primary mirror 30. However, nowhere is the term “mount” used to describe the “fiber distribution panel.” On the contrary, the fiber distribution panel is described as a “plug and play” device, which indicates the device’s removable or detachable nature as opposed to the apparent fixed nature of a mount. Had Mr. Muhs intended for the fiber distribution panel limitation to encompass “mounts” he would not have described the fiber distribution panel with language indicating its removable nature. Considering this full understanding of the intentions of Mr. Muhs in claiming a “fiber distribution panel,” the term cannot be construed to include a “concentric fiber mount assembly,” and, likewise, the concentric fiber mount assembly cannot be considered a disclosure of a fiber distribution panel.

(2) CONCLUSION

Appellants respectfully submit that the rejection of claims 1, 3-6, and 8-12 for nonobviousness is improper because the combination of the Muhs and Levinson references does not disclose, teach or suggest "at least one fiber distribution panel" as claimed. For this reason it is respectfully submitted that the rejection is improper and it is requested that it be reversed.

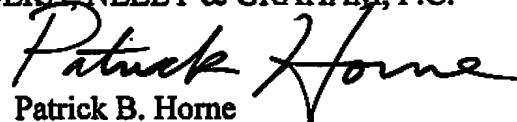
Due to the urgency of this matter and its economic implications, an expedited review of this appeal is earnestly solicited.

In the event this response is not timely filed, Applicants hereby petition for the appropriate extension of time and request that the fee for the extension along with any other fees which may be due with respect to this paper be charged to our Deposit Account No. 12-2355.

Respectfully submitted,

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